

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

GERARDO HERNANDEZ,

Plaintiff,

v.

TAQUERIA EL GRULLENSE; JUAN
FRANCISCO GAMEZ GARCIA dba
TAQUERIA EL GRULLENSE; OSCAR PANG
CHENG LIU and CHU CHING LIU as Trustees
of the OSCAR PANG CHENG LIU and CHU
CHING LIU TRUST; and DOES 1–10,
inclusive,

Defendants.

No. C 12-03257 WHA

**ORDER GRANTING
UNOPPOSED MOTION FOR
LEAVE TO FILE SECOND
AMENDED COMPLAINT**

On February 28, 2013, plaintiff Gerardo Hernandez filed a motion for leave to file a second amended complaint. The motion was made on the last permissible date to seek leave to amend set by the case management order (Dkt. No. 43). The proposed pleading makes two changes: (1) it adds one paragraph referencing Exhibit A, and (2) it adds Exhibit A, which is an inventory of barriers found in defendants' parking lot, entrance, transaction counter, dining area, and restrooms that allegedly limit access to people who are disabled.

Plaintiff amends the complaint to include Exhibit A because, citing *Oliver v. Ralphs Grocery Co.*, 654 F.3d 903, 909 (9th Cir. 2011), "for purposes of Rule 8, a plaintiff must identify the barriers that constitute the grounds for a claim of discrimination under the ADA in the complaint itself" and not solely in the expert report. Exhibit A was the result of a joint site

1 inspection conducted by the parties in November 2012 and is an excerpt from plaintiff's access
2 consultant report dated February 4, 2013. Plaintiff asserts that he requested defendants to
3 stipulate to the second amended complaint, but because defendants refuse to do so, plaintiff
4 filed the present motion for leave.

5 Defendants' opposition or statement of non-opposition to the motion was due on
6 March 14. That date has come and gone, and no response has been received. Accordingly, and
7 for good cause shown, plaintiff's motion for leave to file a second amended complaint is
8 **GRANTED**. Plaintiff must file the amended pleading by **MARCH 20**. The hearing scheduled for
9 April 4 is **VACATED**.

10
11 **IT IS SO ORDERED.**

12
13 Dated: March 19, 2013.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE